

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 473

September 28, 1995, 3:04 p.m.
Page S-14471 Temp. Record

DENNIS NOMINATION/Circuit Judge, Motion to Recommit

SUBJECT: Nomination of James L. Dennis, of Louisiana, to be a United States Circuit Judge for the Fifth Circuit. Motion to recommit.

ACTION: MOTION TO RECOMMIT REJECTED, 46-54

SYNOPSIS: James. L. Dennis, of Louisiana, was born January 9, 1936, in Monroe, Louisiana. He received a B.A. degree from Louisiana Technology University in 1959, a J.D. from Louisiana State University Law School in 1962, and a LL.M. from the University of Virginia Law School in 1984. His employment history is as follows: 1955-1957, U.S. Army, active duty; 1962-1968, Associate and Partner: Judson, Potts, & Bernstein; 1968-1972, Member: Louisiana House of Representatives; 1972-1974, Judge: District Court of Louisiana; 1974-1975, Judge: Court of Appeals of Louisiana; 1975-present, Associate Justice: Supreme Court of Louisiana.

Senator Cochran moved to recommit the nomination.

NOTE: Following the failure of the motion to recommit, the nomination was confirmed by voice vote.

Those favoring the motion to recommit contended:

Argument 1:

This motion to recommit is being made on the basis of newly discovered evidence. This nomination was made last Congress. The Judiciary Committee held one hearing, at which only one Senator was present. That Senator asked a few perfunctory, boilerplate questions and then the nomination was approved by voice vote. The next day, the Times-Picayune in Louisiana ran a story on a court case on which Justice Dennis had failed to recuse himself.

The court case in question involves a private endowment in which Louisiana legislators each pick one constituent per year to receive a scholarship to Tulane University. Legislators have not commonly revealed whom they have picked. The Times-Picayune,

(See other side)

YEAS (46)		NAYS (54)			NOT VOTING (0)	
Republicans (46 or 85%)	Democrats (0 or 0%)	Republicans (8 or 15%)	Democrats (46 or 100%)		Republicans (0)	Democrats (0)
Abraham	Hutchison	Bennett	Akaka	Inouye		
Ashcroft	Inhofe	Campbell	Baucus	Johnston		
Bond	Kassebaum	Hatch	Biden	Kennedy		
Brown	Kempthorne	Hatfield	Bingaman	Kerrey		
Burns	Kyl	Jeffords	Boxer	Kerry		
Chafee	Lott	Packwood	Bradley	Kohl		
Coats	Lugar	Simpson	Breaux	Lautenberg		
Cochran	Mack	Stevens	Bryan	Leahy		
Cohen	McCain		Bumpers	Levin		
Coverdell	McConnell		Byrd	Lieberman		
Craig	Murkowski		Conrad	Mikulski		
D'Amato	Nickles		Daschle	Moseley-Braun		
DeWine	Pressler		Dodd	Moynihan		
Dole	Roth		Dorgan	Murray		
Domenici	Santorum		Exon	Nunn		
Faircloth	Shelby		Feingold	Pell		
Frist	Smith		Feinstein	Pryor		
Gorton	Snowe		Ford	Reid		
Gramm	Specter		Glenn	Robb		
Grams	Thomas		Graham	Rockefeller		
Grassley	Thompson		Harkin	Sarbanes		
Gregg	Thurmond		Heflin	Simon		
Helms	Warner		Hollings	Wellstone		

EXPLANATION OF ABSENCE:

- 1—Official Buisiness
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

a Louisiana newspaper, thought this information should be public knowledge. It sued 5 State legislators to release documents identifying who had been given scholarships on the grounds that they were public documents. The trial court agreed that they were public documents, and also granted a writ of mandamus ordering the legislators to turn over the documents in their possession and in Tulane's possession. It also awarded attorney fees to the newspaper. The State circuit court of appeals upheld the ruling that the records were public documents, but struck down the writ and the attorney fees, saying that it was premature to issue a writ before the legislators refused to turn over the documents. The ruling on the writ and the attorney fees was then appealed to the State Supreme Court, on which Justice Dennis sat.

Before serving on that court, Justice Dennis had been a State legislator who had dispensed scholarships, and thus was a member of the class that would be directly affected by this writ of mandamus. Further, Justice Dennis' son had received scholarships for 3 years from a legislator. Some Senators have suggested that Justice Dennis did not have a conflict of interest because the matter on which he had an interest--whether or not those records should be public records--had already been decided. All he was ruling on was whether those legislators should be forced to comply before they refused to comply. It is interesting to note, though, that those legislators then refused to comply. A second suit was filed by the Times-Picayune, this time against Tulane University, demanding the release of all scholarship documents. The Times-Picayune then began an investigation of Justice Dennis, including by questioning him for not recusing himself. At this time, his nomination was before the Judiciary Committee. He did not mention to the Committee that he was being investigated for a possible conflict of interest.

The existence of these scholarships, and who has been receiving them, has caused quite a stir in Louisiana. Without doubting the qualifications of any of the recipients of the scholarships, many Louisianans have been a bit curious as to why the sons and daughters of powerful politicians in Louisiana have been found to be deserving of free educations much more frequently than have the sons and daughters of less well connected individuals. Certainly, the appearance is that politicians are lining their own pockets. It is not at all surprising that legislators had to be sued to reveal who received these scholarships.

We think it is important to hold hearings on this issue. We have been told by one staff member of the Judiciary Committee that if this information had been available to begin with the nomination would never have been moved forward. Now that it has been, though, some Senators are determined not to reopen the case. We think that is a mistake. Justice Dennis is being considered for a lifetime appointment to the second highest court in the land. Before we confirm him, we should be certain that it was appropriate for him not to recuse himself. Therefore, we urge our colleagues to support the motion to recommit.

Argument 2:

Recommitting this nomination, which was approved last Congress, would allow the 5 new Members of the Committee to question Judge Dennis on his judicial record. We have received a large amount of correspondence from the business and law enforcement communities in Louisiana, which describe him as a brilliant, liberal-activist judge with a penchant for finding the law to mean whatever he wants it to mean. For example, in a product liability suit (*Halphin v. Johns Manville Sales Corp.*, 484 So.2d 110 (La. 1986)) he was not satisfied with the product liability law that held manufacturers responsible for design defects and failure to provide appropriate warning labels, so he ruled that damages could be awarded if a product were "unreasonably dangerous per se." Though it is not a matter for questioning Justice Dennis, we also think the Judiciary Committee should consider the appropriateness of appointing a Louisianan to a Circuit spot traditionally held by a Mississippian. This matter should be of grave concern to Senators from all small States. Circuit courts cover multiple States. The large States should not end up with total control over those circuits. We do not see any need to rush this process. Personally, we would be more comfortable in voting in favor of this nominee after holding further hearings. Therefore, we will support the motion to recommit.

Those opposing the motion to recommit contended:

Under Louisiana law, there are only 5 acceptable reasons for recusal. These reasons are strict, because otherwise judges may be tempted to recuse themselves from difficult cases. The only reason which Justice Dennis even comes remotely close to meeting is that he must dismiss himself if he has an interest in a case. Some observers have claimed that he had such an interest in the Times-Picayune case. We have examined the evidence and found that no such interest existed. The only issues that were before his court were whether a writ of mandamus should be issued and whether attorney fees should be awarded. The one issue that applied to him, whether scholarship awards were public documents, was already decided. No one was questioning whether he should be ordered to do anything or pay any legal fees as a result of his work as a former legislator, nor was anyone questioning whether the legislator who had given his son scholarships should be ordered to do anything or pay any legal fees; the suit in question was against 5 different legislators, so the writ and the fees applied only to them. Justice Dennis gave us this explanation, and we are fully satisfied by it. As for Justice Dennis being an anti-business, soft-on-crime judge, we note that he was repeatedly elected as a judge in a conservative southern State. In that State, his decisions have been in the conservative mainstream. Senator Hatch, the Chairman of the Judiciary Committee, has fully reviewed this new evidence, as has the ranking Member, Senator Biden. Both have concluded that further hearings would be pointless. Senator Hatch, in fact, has stated that if this nomination is recommitted no further action

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will be taken--in other words, agreeing to this motion will kill this nomination. We oppose that result. Justice Dennis is fully qualified and should be confirmed without further delay.